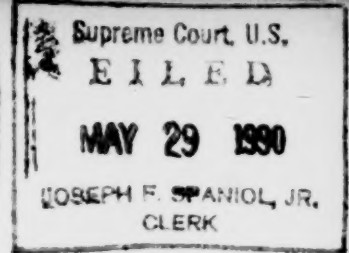


89-1850(3)

NO. _____



IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1989

GEORGE M. & FERRELL S. HORN
PETITIONERS

V.

SMITH & MERONEY, a professional
corporation, and ANNE E. MERONEY,
individually.

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT AND COURT OF
APPEALS OF GEORGIA

GEORGE M. HORN, PRO SE

AND

FERRELL S. HORN, PRO SE

COUNSEL OF RECORD

308 Brookside Dr.
Auburn, AL 36830
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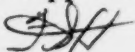


QUESTIONS PRESENTED

1. Can the Supreme Court of Georgia deny the petitioners a Writ of Certiorari when the trial court failed, or refused, to consider the issue of "lex loci delicti" and the Doctrine of Comity when a tort is committed outside the jurisdiction of the courts of Georgia?

Southern R.R. v. Decker, 5GA App. 21, 62 S.E. 678 (1908);

Gulf Collateral, Inc. v. Morgan, 415F. Supp. 319 (S.P. Ga) (1976)

Jackson v. Johnson, 34 Ga. 511, 518 

2. Can the courts of Georgia ignore the fact that a conflict of laws exists between two states and fail to determine and protect the interests of the legal heirs at law, residents of Alabama, by granting a motion for summary judgment and denying a Writ of Certiorari?

Code of Alabama 1975, § 6-5-410 (Wrongful Death).

Code of Alabama 1975, § 43-8-41 et seq (Descent and Distribution)

Code of Georgia 1981, O.C.G.A. § 51-4-1 (Wrongful Death)

Code of Georgia 1981, O.C.G.A. § 53-4-1 (Descent and Distribution)

Code of Georgia 1981, O.C.G.A. § 53-4-30 (Determination of legal heirs and their interests)

3. Can the Supreme Court of Georgia deny a Writ of Certiorari when the trial court grants a Motion for Summary Judgment in a suit which alleges negligence of an attorney representing an intestate estate thereby denying the petitioners the right to the due process of law under the 14th Amendment of the United States Constitution?

Wakefield v. Winter, No. 44761, 121 Ga. App. 259 (1970), 174 S.E.

2nd 178, Judgment #1, 181 (33); Ellington v. Tolar Construction

Co., No. 31176, Sup. Ct. of Ga, 237 Ga 235, July 9, 1976, Judgment

#3, 181 (33) and #5, Negligence 136 (8), 227 S.E. 2nd 236.



PARTIES

The caption contains the names of all parties to the proceeding in the courts below.



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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

GEORGE M. & FERRELL S. HORN
PETITIONERS

V.

SMITH & MERONEY, a professional
corporation, and ANNE E. MERONEY,
individually.

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT AND COURT OF
APPEALS OF GEORGIA

BRIEF FOR PETITIONERS

OPINIONS BELOW

1. Order of Georgia Supreme Court appears in Appendix A.
2. Order of Court of Appeals of Georgia (rehearing) appears in Appendix B.
3. Order of Court of Appeals of Georgia appears in Appendix C.
4. Order of Superior Court of Fulton County, Georgia appears in Appendix D.



JURISDICTION

The jurisdiction of the court is based on 28 U.S.C. § 1257. The order of the Supreme Court of Georgia denying certiorari was issued on March 1, 1990 and this petition is filed within 90 days.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution, which provides:

“...nor shall any State deprive any person of life, liberty, or property, without due process of law...”

STATUTORY PROVISIONS INVOLVED

Code of Alabama 1975,
§6-5-410 Wrongful Death

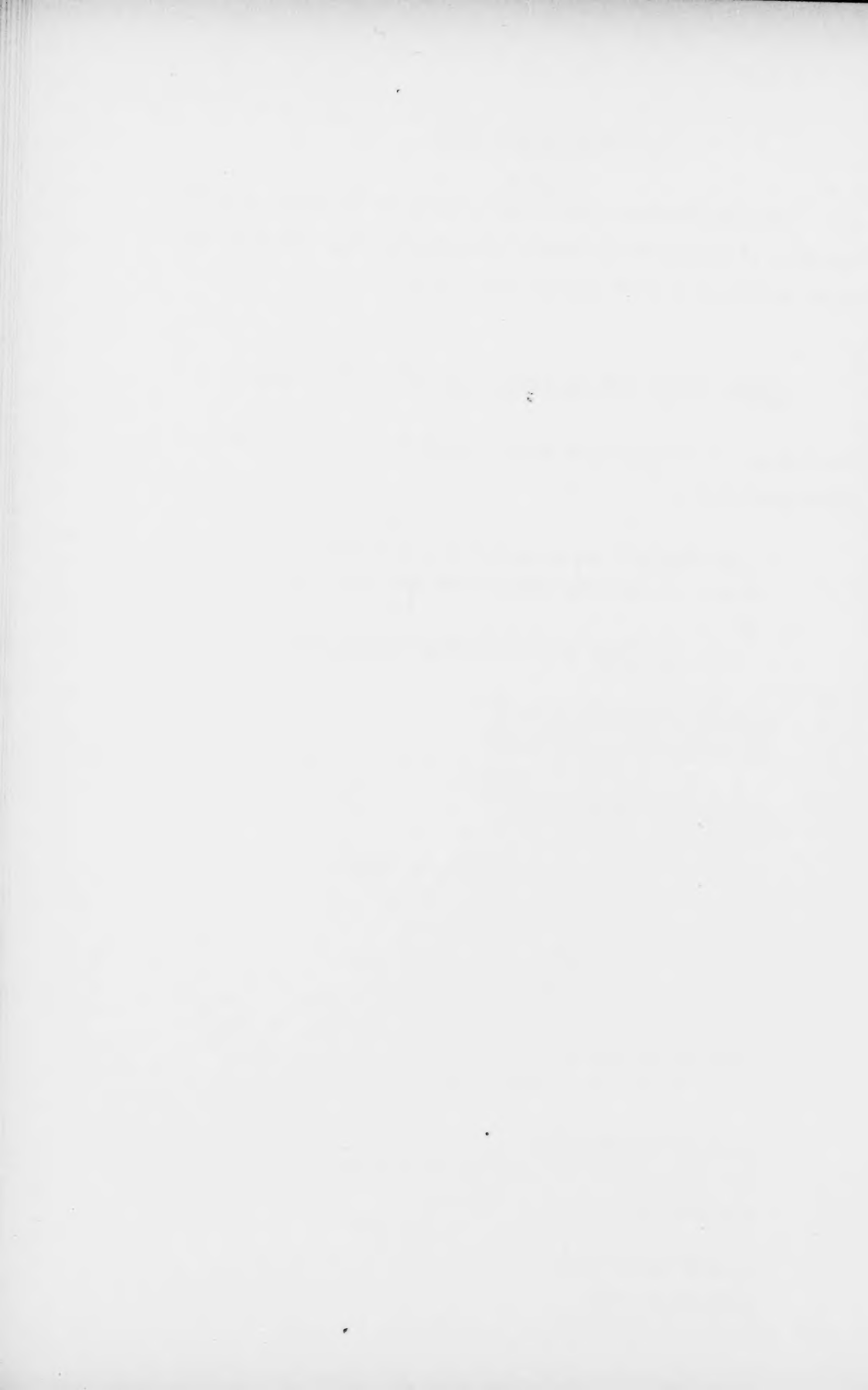
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Code of Georgia 1981
O.C.G.A. §53-4-30 (Judicial determination of legal heirs and their interests.)

United States Code
Title 28 § 1257



STATEMENT OF THE CASE
FACTS CONCERNING THE CASE

Petitioners, George Horn and Ferrell Horn, Alabama residents, the natural living parents of William Horn and the intestate decedent, George L. Horn, resident of Georgia who met his demise through negligent homicide, July 9, 1983 in Gadsden, Alabama while riding as an invited passenger in the fatal airplane which was devoid of certain FAA required safety equipment (R 250-253).

Based on the situs of the tortious act (*lex loci delicti*) and the concept of Comity, Alabama Statutes control the Wrongful Death action and the Alabama Statutes of Descent and Distribution of intestate Wrongful Death proceeds. Petitioners were and are next of kin and beneficiaries under intestate decedent's estate with legal rights to share equitably with the widow. legal representative of the estate and sole heir in Georgia above the amount of \$100,000.00 recovery (R 277-279; R 483-486).

Petitioners were and are major creditors of the intestate estate for the monies financed to the decedent for pre and post graduate dental education and setting up his family dental practice, living and operation and maintenance of an automobile during his pre and post educational years. A verbal agreement existed between petitioners and the decedent that these monies were a loan and were to be paid back with interest which the decedent was honoring at the time of his death (R 251-252; R 341).

Respondents, agents for the principal, intestate decedent, accepted employment to render legal services and fulfill obligations prudently, competently and skillfully under the contract with intestator's estate where respondents' fees were paid from the intestator's estate (R 351). Petitioners notified Respondents at the incep-



tion of her employment contract of petitioners' legal rights to share separately and severally in the proceeds from Wrongful Death action and repayment of the debt of the intestate to petitioners (R 353). Pursuant to petitioners' daughter-in-law, widow and legal representative of decedent's estate, request of petitioners to sign a General Release forfeiting all petitioners legal rights under intestate estate in consideration of petitioners' furniture, placed on loan in decedent's dental office, and legal representative's refusal to acknowledge petitioner's loan, plus interest, and repayment (R 257-258; R 459); petitioners employed legal counsel in Alabama to protect petitioners' rights sharing in wrongful death proceeds. Petitioners' attorney, expert in recovering large amounts from air crash litigation action (R 258; R 344) contacted respondents in an attempt to enjoin legal representative of intestator's estate, Anne H. Horn, with petitioners, in prosecuting a wrongful death action in Alabama, situs of the tort. Respondents refused (R 434-438); entered into a contingency contract with estate representative, Anne H. Horn only; paid from proceeds of intestate's estate, filed a wrongful death action in Georgia (R 399) to collect liability insurance proceeds against only one defendant prior to paying intestator's debts to petitioners (R 439-401). Respondents dismissed the Georgia wrongful death action (R 433) with prejudice prior to the release of the final FAA report (R 288) as to cause of tort in consideration of \$100,000.00 limit of the liability insurance proceeds, blocking petitioners' claims brought in Alabama against all potential culpable defendants (R 474-475) and Anne H. Horn retained the remainder and failed to place amount recovered for conscious pain and suffering prior to death and funeral expenses of decedent into estate (R 470-471). Petitioners raised allegations of collusion and fraud in Probate Court of Fulton County, Georgia



pertaining to wrongful death settlement (R 468-469). Petitioners contend that the alleged collusion and fraud violated their rights to share and partake in the amount of the proceeds of the wrongful death claims which were settled for a paltry sum of \$100,000.00 without the petitioners consent and/or knowledge (R 492-492). Petitioners contend that there were additional funds available from other potential culpable defendants (R 489; R 445-446) to recover.

Respondents denied petitioners claim against decedent's estate to collect petitioners debt (R 383); notwithstanding the petitioners submission of certified documentation; perpetrating gross violation of petitioners' creditorship rights, resulting in personal and financial injury and damages to petitioners. Petitioners were forced to file a complaint in Cobb county State Court, Georgia (R 461-464) in order to obtain a money judgment against the intestate's estate, which the respondents defended against on behalf of the Georgia legal representative of estate, against petitioners, even though respondents' fees were paid by intestate's estate.

On June 9, 1987 petitioners filed a legal malpractice suit against the respondents for negligence in prosecuting the Wrongful Death case. Basis for the suit was under the doctrine of "lex loci delecti" which gave the laws of the State of Alabama control in Wrongful Death suits.

Respondents filed a Motion for Summary judgement which was granted by the Fulton County Superior Court in September 1988.

Petitioners filed an appeal to the Superior Court judgement on June 30, 1989.

The case was argued orally before the Court of appeals of Georgia and the trial court's summary judgement award was upheld on January 8, 1990.

A Motion for a rehearing by the petitioners was filed on January 17, 1990 and denied on January 23, 1990.

On February 9, 1990 petitioners filed a Petition of Certiorari with the Supreme Court of Georgia and it was denied on March 1, 1990.

THE STATE TRIAL AND APPELLATE COURT PROCEEDINGS

No trial was held as the respondents were granted a Motion for Summary Judgement on September 6, 1988.

An appeal was taken to the Supreme Court of Georgia on June 30, 1989 and subsequently transferred on July 7, 1989 to the Georgia Court of Appeals as being within the exclusive jurisdiction of the Court of Appeals.

Oral argument was heard on September 15, 1989 and on January 8, 1990 the Court of Appeals found "the trial court correctly granted summary of judgement in favor of respondents.

Petitioners made a Motion for Rehearing with the Georgia Court of Appeals on January 17, 1990 and it was denied on January 23, 1990.

Petitioners filed with the Supreme Court of Georgia a Petition for Certiorari on February 9, 1990 and it was denied on March 1, 1990.

SUMMARY OF ARGUMENT

I. Southern Railway Co. v. Decker, 5 Ga. App. 21, 62 S.E. 678 (1908) held that the situs of the tort determines the civil results of its commission and further stated that, "Suits based on torts com-



mitted in other States, the courts of this State will enforce and be governed by the *lex loci delecti*....” This was reaffirmed as late as 1976 in Gulf Collateral, Inc. v. Morgan, 415 F. Supp. 319 (S.D. Ga.) (1976). Based on these decisions, the Georgia Courts have denied Alabama citizens, the petitioners, their due process of law as guaranteed by the United States Constitutional Amendment #14.

II. Where the laws of the two states conflict, Alabama Code 1975, §6-5-410 (Wrongful Death) and §43-8-41 et seq (Descent and Distribution); and the Code of Georgia 1981, O.C.G.A. §51-4-1 (Wrongful Death), 53-4-1 (Descent and Distribution) and 53-4-30 (Judicial determination of legal heirs and their interests), one state cannot deny the rights of the citizens of another state by granting Summary Judgment and denying a Petition of Writ of Certiorari without taking away petitioners rights to due process of law under the 14th Amendment of the United States Constitution.

III. Petitioners allege that negligence on the part of the respondents is a question for a jury to decide and not a Motion for Summary Judgment. When the courts of Georgia granted the respondents Motion for Summary Judgment and denied a Writ of Certiorari to the petitioners, it conflicted with Wakefield v. Winter, No. 44761, 121, Ga. App. 259 (1970, 174 S.E. 2nd 178, Judgment #1, 181 (33) and Ellington v. Tolar Construction Co., No. 31176, Sup. Ct. of Ga. 237 Ga. 235, July 9, 1976, Judgment #3, 181 (33) and #5, Negligence, 136 (8), 227 S.E. 2nd 236, and denied petitioners their legal rights and due process of law.



ARGUMENT

I.

Petitioners' rights have been violated because the decision of the Georgia Court of Appeals in Southern R.R. v. Decker, 5 Ga App. 21, 62 S.E. 678 (1908) held that,

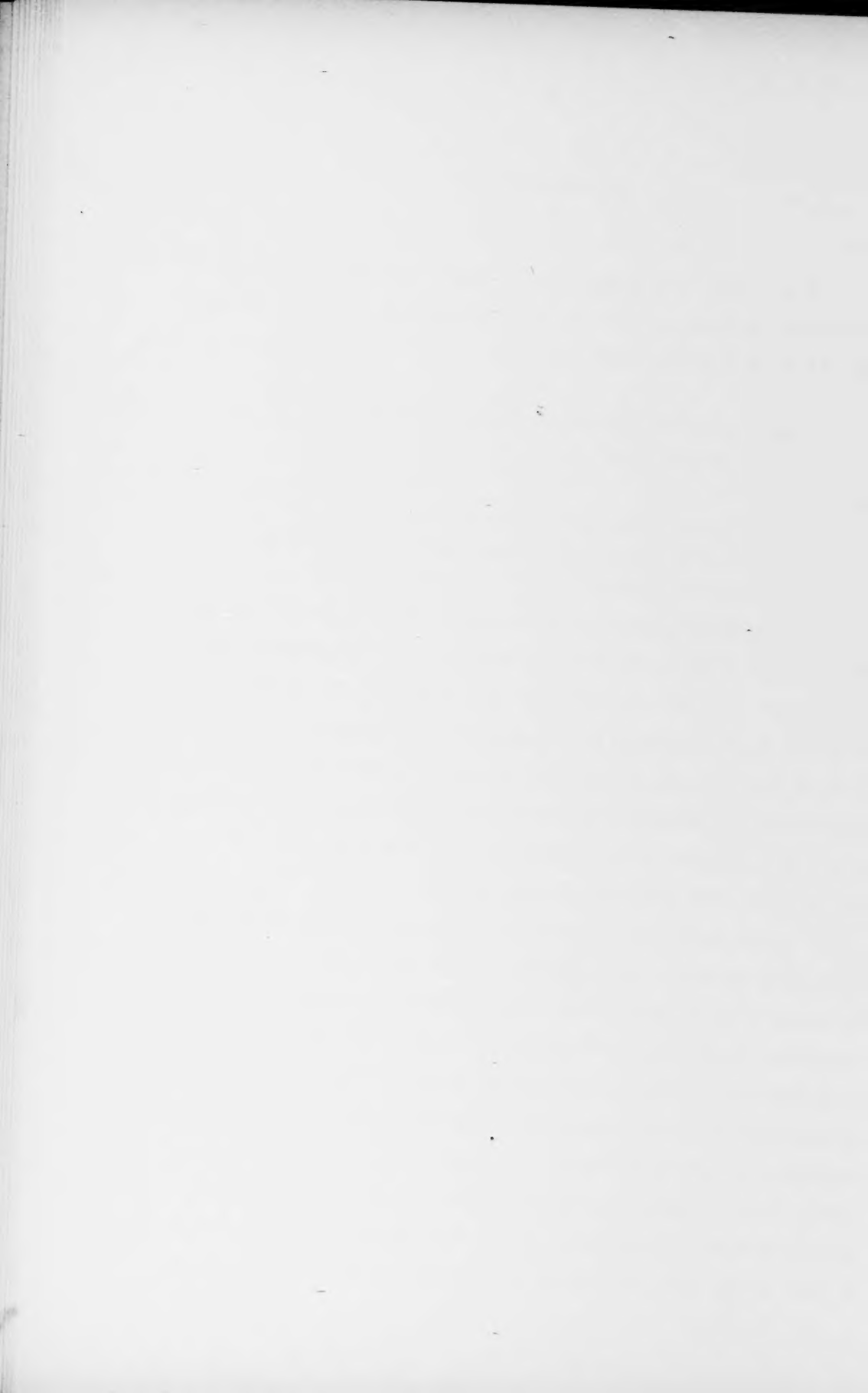
“the situs of the tort determines the civil results of its commission”

and

“suits based on tort committed in other states, the courts of this state will enforce and be governed by the ‘lex loci delecti’”.

The forgoing decision leaves no doubt that the Wrongful Death action filed by the respondents was to be governed by the statutes of the state of Alabama and therefore the statutes of Alabama, Code of Alabama 1975, § 6-5-410 (Wrongful Death) and Code of Alabama 1975, § 43-8-41 et seq (Intestate Succession and Descent and Distribution) prevail thus making the petitioners heirs at law and legatees who were injured by the negligence of the respondents, with standing to bring suit.

In the petitioners' appeal to the Court of Appeals of Georgia it was pointed out in oral argument that the petitioners never made the claim of an attorney/client relationship of a contractual nature; moreover, the petitioners/respondents relationship was based on the facts that the respondent represented Anne H. Horn, as administratrix of the intestate estate of George Lawrence Horn who met his negligent demise in Alabama. Petitioners are heirs of George L. Horn. Funds collected by the estate are collected for the use and benefit of heirs. Respondents, while representing the estate owed a duty to the heirs to collect all available funds for the estate



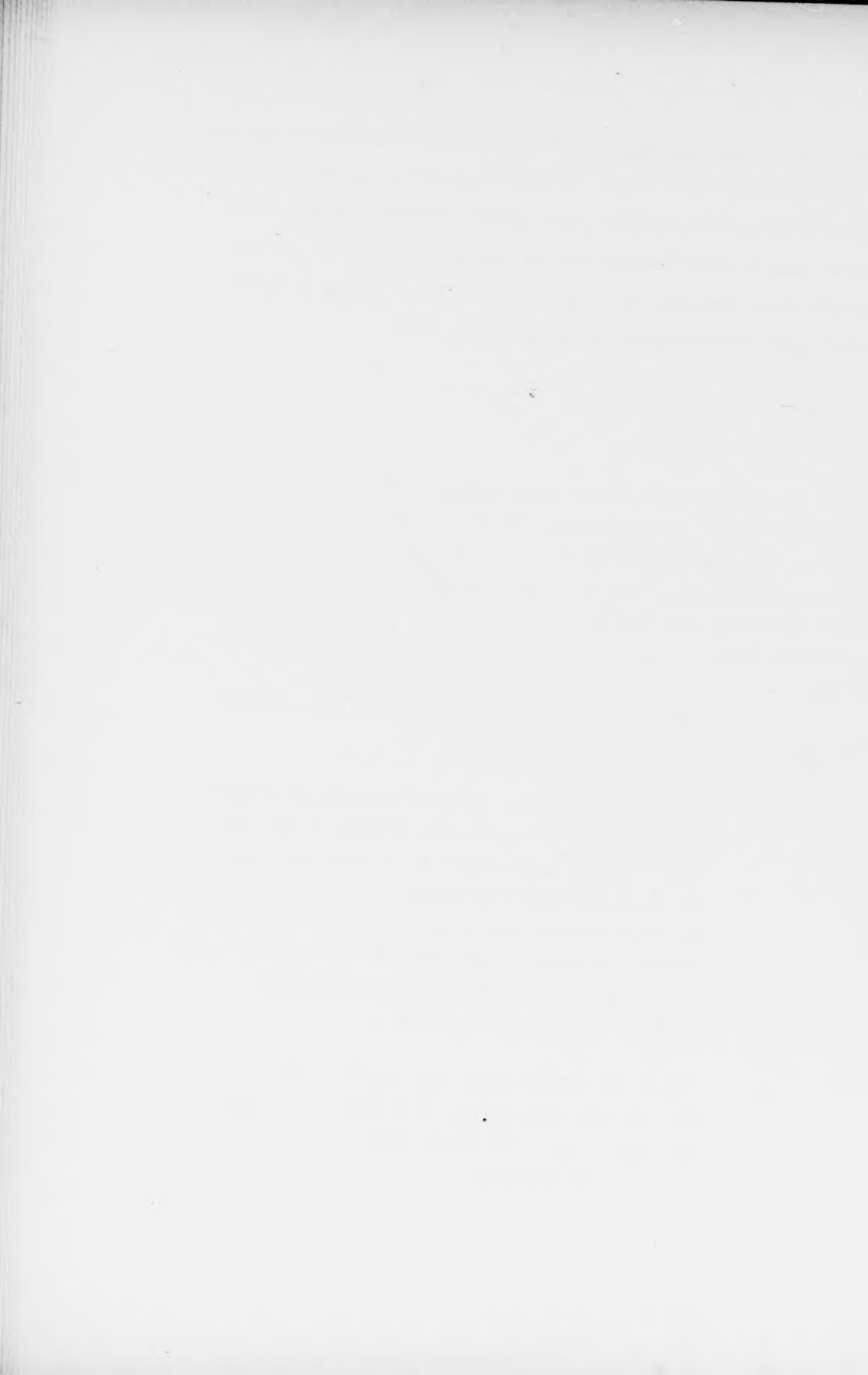
including a reasonable amount for the claim on the value of the life of George Lawrence Horn. Respondents failed in their duty to collect a reasonable amount, but instead collected a paltry sum not in keeping with the value of the life of a 31 year old dentist and the other damages allowable by law; thus injuring the petitioners and denying them due process of law.

II.

Petitioners rights have been violated because the intestacy laws governing descent and distribution in Georgia and Alabama conflict, Georgia Code 1981 O.C.G.A. §53-4-1, §51-4-1 and 53-4-30; and Alabama Code 1975, Section 43-8-41 et seq, and §6-5-410; however, the Georgia courts have ignored and/or refused to address these issues thus denying the petitioners due process of law.

The foregoing statements are based on the fact that the Georgia courts:

- a. Denied petitioners a motion for a stay of proceedings until the Fulton County Probate Court and Cobb County State Court of Georgia had ruled on the motions filed by petitioners and rendering a decision prior to pro-se petitioners having time to complete discovery after their attorney abandoned them; conflicting with Alabama, Georgia, Federal and Constitutional laws.
- b. The trial court admitted that the facts of the petitioners case were convoluted; therefore, petitioners rights could only be protected by a jury being presented all the facts and making a judgment, thus allowing justice to prevail.



- c. The Georgia courts based their decision to grant respondents motion for summary judgment, denying petitioners due process of law, on the theory of attorney/client relationship. The petitioners complaint was never based on an attorney/client relationship theory but was based on the petitioners being legal heirs, or beneficiaries pursuant to the laws of the State of Alabama and would share in the proceeds of a wrongful death verdict, pursuant to the laws of intestate succession of the State of Alabama. Therefore the respondents owed a duty of due care flowing to the legal heirs, the petitioners, during the time they were representing the administratrix of the intestate decedant's estate in the wrongful death suit. The petitioners rights have been violated by the Georgia courts, who have denied petitioners an opportunity for relief of their injuries before a jury.
- d. When the Georgia courts concluded that the respondents had not proximately caused any of petitioners alleged damages while representing the administratrix of the decedants intestate estate, it conflicted with the Alabama Statutes of Wrongful Death and Descent and Distribution. The respondents owed the petitioners a duty of due care pursuant to the laws of Alabama (situs of the tort) and Georgia in regard to the intestate estate, wrongful death, descent and distribution and judicial legal heirs. During the time they were representing the administratrix of the intestate estate, the respondents failed to collect for the full value of the decedent's life; moreover, advised the decedents's widow that it would be mete and



proper to settle the wrongful death claim for the paltry sum of One Hundred Thousand Dollars thus failing in their fiduciary duties to protect the rights of the decedent's estate and the rights of the petitioners as legal heirs.

- e. The Court of Appeals of Georgia order, Appendix C, Section 1, Paragraph 2, Page 4, states that the appellants never informed the appellees that appellants were relying upon them for legal advice is in direct conflict with the evidence presented in the appellants response to the appellees Motion for Summary Judgment. Exhibit #8, Page 353 of the Record evidences appellants personal certified letter to appellees. Exhibit 10, Page 379 of the Record evidences appellants attorney's notification to the appellees of the necessity to protect appellants legal rights in the wrongful death suit. Exhibit 29, Pages 435-439 of the Record evidences that two Georgia and two Alabama attorneys of the appellants made it clear that the appellants were relying on the appellees to protect appellants legal rights in the wrongful death suit.

As shown, there are many disputed facts that must be presented to a jury to protect petitioners legal rights and guarantee due process of law.

Appellants concur that they always understood that appellees were the legal representatives of their son's widow; however, the petitioners also understood that the representatives of the administratrix of their son's intestate estate had a duty flowing through the administratrix to all legatees, petitioners, which appellees completely disregarded and proximately caused petitioners injuries.

1

III.

Petitioners' rights were violated when the trial court of Georgia granted the respondents a motion for summary judgment when a complaint of negligence is a matter to be decided by a jury and not a matter for summary judgment.

Wakefield v. Winter No. 44761, 121 Ga. App. 259 (1970), 174 S.E. 2nd, 178, Judgment #1, 181(33).

"Issues of negligence...are ordinarily not susceptible of summary adjudication,...but must be resolved by trial court in ordinary manner."

Ellington v. Tolar Construction Co., No. 31176, Sup. Crt. of Ga. 235 Ga. 235, July 9, 1976, Judgment #3, 181 (33).

"Generally, issues of negligence...are not susceptible to summary adjudication...but should be resolved by trial in ordinary manner."

Negligence #5, 136(8).

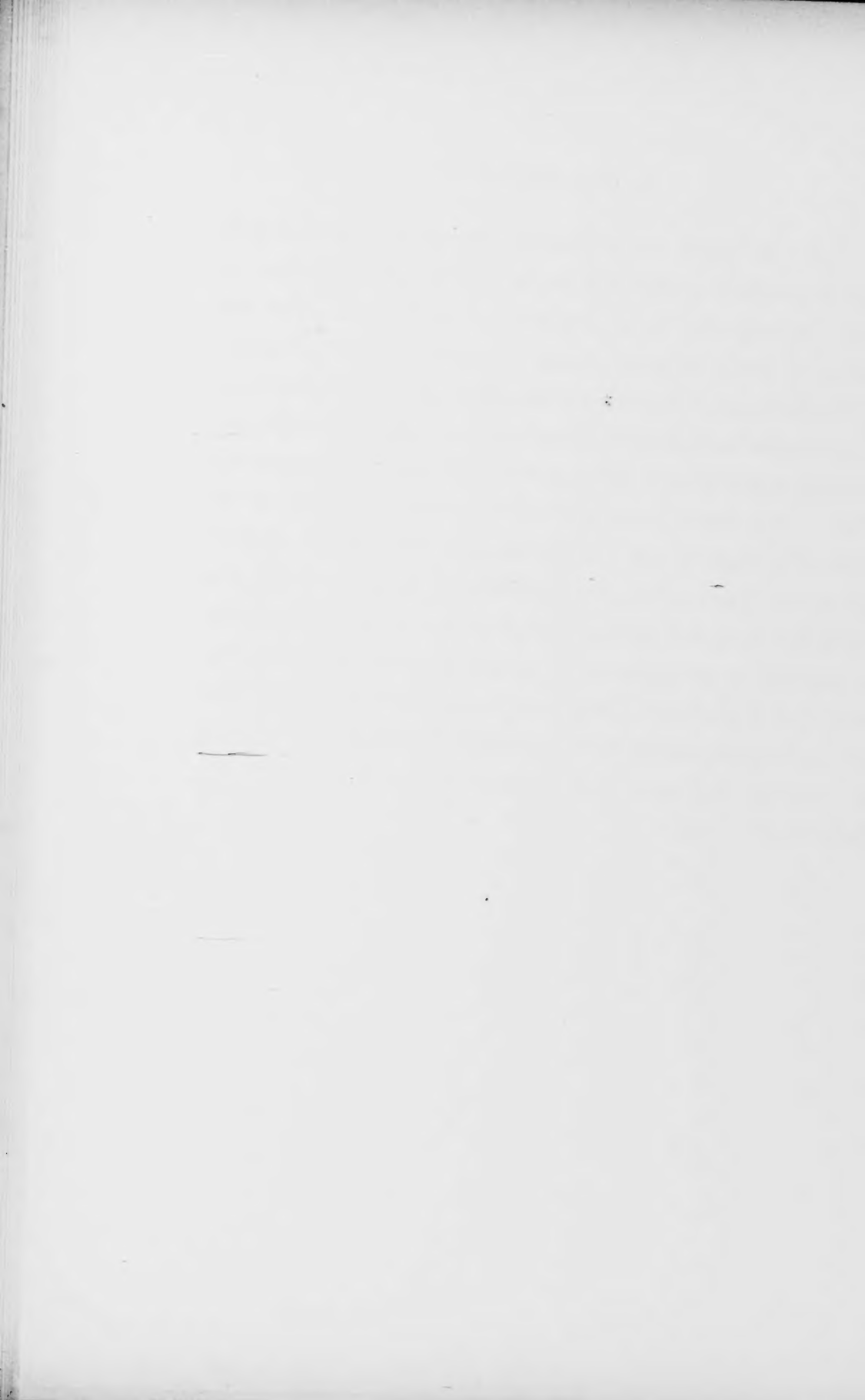
"Even when there is no dispute as to facts, it is usually for jury to say whether conduct in question meets standard of reasonable man."

The foregoing decisions leave no doubt that the Georgia courts granting a Motion for Summary Judgment and denying of a Writ of Certiorari is in conflict with State and Federal laws and inappropriate, especially when the trial court was aware that there were convoluted facts to be adjudicated before a jury, as evidenced by the Fulton County Superior Court's order dated September 6, 1988.



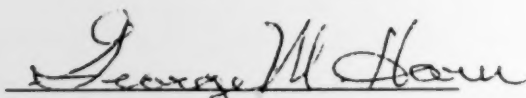
CONCLUSION

In conclusion, the petitioners, George M. and Ferrell S. Horn, respectfully submit that the decision to grant a Motion for Summary Judgment to the respondents by the trial court and subsequent denial of appeal, denial of a motion for a rehearing by the Georgia court of Appeals and the denial of a Writ of Certiorari by the Georgia Supreme Court deprived the petitioners of their constitutional rights of due process of law under the 14th Amendment of the United States Constitution. The failure, or refusal, by the courts of Georgia to consider the issue of the conflicts of laws between the states of Georgia and Alabama and the granting of a Motion for Summary Judgment when at issue is the negligence of the respondents are issues which should be settled by a jury. The granting of a Motion for Summary Judgment is in conflict with Georgia laws; and the failure by the courts of Georgia to recognize the Doctrine of Comity and the issue of "lex loci delecti" are travesties of justice.



For these reasons, the petitioners pray that this Honorable Court will issue a Writ of Certiorari and review decisions and opinions of the Superior Court of Fulton County, the Court of appeals of the State of Georgia and the Supreme Court of Georgia; and upon such review will reverse the decision of the courts in Georgia and grant a Writ of Certiorari.

Respectfully submitted,

A handwritten signature in cursive script, reading "George M. Horn", written over a horizontal line.

George. M. Horn, Pro Se

A handwritten signature in cursive script, reading "Ferrell S. Horn", written over a horizontal line.

Ferrell S. Horn, Pro Se

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

GEORGE M. AND FERRELL S. HORN
PETITIONERS

V.

SMITH & MERONEY, a professional
corporation, and ANNE E. MERONEY,
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RESPONDENTS

APPENDIX TO THE
PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT AND COURT OF
APPEALS OF GEORGIA

GEORGE M. HORN, PRO SE

AND

FERRELL S. HORN, PRO SE

COUNSEL OF RECORD

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Auburn, AL 36830
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APPENDIX A

SUPREME COURT OF THE STATE OF GEORGIA
CLERK'S OFFICE
ATLANTA

DATE: MARCH 1, 1990

GEORGE M. HORN
308 BROOKSIDE DRIVE
AUBURN, AL 36830

Case No. S90C0628

GEORGE HORN ET AL. V. SMITH AND MERONEY, P.C.,
ET AL

COURT OF APPEALS CASE NO. A89A1923

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

Very truly yours,

JOLINE B. WILLIAMS, Clerk

APPENDIX B

COURT OF APPEALS
OF THE STATE OF GEORGIA

ATLANTA

JANUARY 23, 1990

The Honorable Court of Appeals met pursuant to adjournment.
The following order was passed:

A89A1923. GEORGE HORN ET AL v. SMITH AND MER-
ONEY, P.C. ET AL

Upon consideration of the motion for a rehearing filed in this
case, it is ordered that it be hereby denied.

COURT OF APPEALS
OF THE STATE OF GEORGIA
CLERK'S OFFICE, ATLANTA
JANUARY 23, 1990

I certify that the above is a true extract from the minutes
of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto
affixed the day and year last above written.

VICTORIA MCLAUGHLIN
CLERK

APPENDIX C

Jan. 8, 1990

CARLEY, C.J.

McMURRAY, P.J., & BEASLEY, J.

In the Court of Appeals of Georgia

A89A1923. HORN et al. v. SMITH AND MERONEY, P.C. et al.

CARLEY, Chief Judge.

When Mr. George Horn died in an airplane crash, he was survived by his wife and by appellant-plaintiffs, his parents. His wife secured the legal services of appellee-defendants to bring a wrongful death action. After the wrongful death claim was settled, appellants filed this legal malpractice action against appellees, alleging a deviation from the applicable standard of care in pursuing the wrongful death claim. Appellees answered and subsequently moved for summary judgment. The trial court granted appellees' motion and appellants appeal.

1. "“It is generally held that an attorney-client relationship must be demonstrated before a plaintiff may recover in a legal malpractice suit This is essential in establishing the element of duty that is necessary to every lawsuit based upon a theory of negligence” Accordingly, the threshold question in the case sub judice is whether or not there was an attorney-client relationship between the appellants and [appellees]. [Cit.]” Moore v. Harris, 188 Ba. App. 251, 252 (372 SE2d 654) (1988).

“The relationship of attorney-client may be expressly created by written contract, or may be inferred from the conduct of the parties. [Cit.] Although ‘[g]enerally, the test of employment is the fee,’ [cits.], the basic question in regard to the formation of the attorney-client relationship is whether it has been sufficiently established that advice or assistance of the attorney is both sought and received in matters pertinent to his profession. [Cit.] “Hudleston v. State, 259 Ga. 45, 46-47 (1) (376 SE2d 683) (1989). In



their depositions, appellants acknowledged that they never paid any legal fees to appellees and never sought any legal advice from them. Likewise, appellants never informed appellees that they were relying upon them for legal advice, and they admit that they have always understood that appellees were the legal representatives of their son's widow. Except for one brief period of time, appellants have been represented by counsel of their own choosing in connection with their legal rights as surviving parents of their deceased son. This, "[t]he evidence demanded a finding that no attorney-client relationship existed, ... in the classic sense of the term. [Cit.] Moore v. Harris, supra at 252-253. It follows that the trial court correctly granted summary judgment in favor of appellees.

2. Appellants remaining enumerations of error have been considered and found to be either moot or without merit.

Judgment affirmed. McMurray, P.J., and Beasley, J.,
concur.

APPENDIX D

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

GEORGE HORN, et al.,
Plaintiffs

vs.

SMITH & MERONEY, P.C., a
professional corporation, et al.,

Defendants

ORDER ON MOTIONS

1. Plaintiffs' motion for stay of proceedings. Plaintiffs' motion for stay of proceedings, filed July 18, 1988, is denied.

2. Defendants' motion for summary judgment. This court has concluded that there are no genuine issues of material fact and that defendants are entitled to judgment as a matter of law.

The plaintiffs are pro se. While the facts of this case are somewhat convoluted, the evidence shows that defendants were retained to represent the plaintiffs' daughter-in-law in connection with certain legal matters growing out of the death of the plaintiffs' son. The plaintiffs have filed this action alleging legal malpractice. However, the evidence fails to support plaintiffs' claims.

It is clear from the record that no attorney-client relationship ever existed between the plaintiffs and the defendants. Additionally, it is clear from the record that the defendants acted with the requisite degree of care, skill and diligence in their representation of plaintiffs' daughter-in-law. Also, from the record this court has concluded that no act or omission by the defendants proximately caused any of plaintiffs' alleged damages.

For the foregoing reasons, defendants' motion for summary judgment is granted.

This 6th day of September, 1988.

William H. Alexander
Judge

APPENDIX E

ALABAMA CODE - §43-8-41 et seq

Intestacy succession and descent and distribution.



APPENDIX FALABAMA CODE - § 6-5-410

Wrongful act, omissions or negligence causing death a personal representative may commence an action and recover such damages as the jury may access in a court of competent jurisdiction within the State of Alabama and not elsewhere for the wrongful act omission or negligence of any person, persons or corporation, his or their servants or agents whereby the death of the testators or intestator was caused, provided the testator or the intestator could have commenced the action for such wrongful act, omission or negligence if it had not caused death.

APPENDIX G

GEORGIA CODE 1981 § 51-4-1 (105-1308)

Wrongful death - full value of life of the decedent as shown by the evidence defined.

APPENDIX H

GEORGIA CODE 1981 § 53-4-1

Rules of distribution - after the payment of the expenses of administration and the debts of the decedent, the balance of the estate both real and personal, shall stand subject to distribution among the heirs at law of the decedent, according to the rules prescribed by law. -



APPENDIX I

GEORGIA CODE 1981. § 53-4-30

Judicial determination of legal heirs and their interests.



CERTIFICATE OF SERVICE

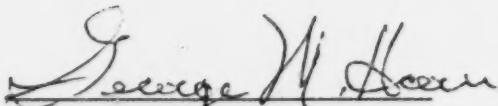
We, George M. Horn and Ferrell S. Horn, hereby certify that three true and corrected copies of the foregoing PETITION FOR WRIT OF CERTIORARI and APPENDIX TO THE PETITION FOR WRIT OF CERTIORAR have been served on:

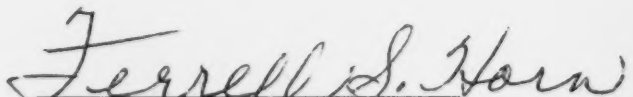
Karen B. Bragman
ARNALL, GOLDEN & GREGORY
55 Park Place, Fourth Floor
Atlanta, GA 30335

by depositing the same in the United States mail in a properly addressed envelope with sufficient postage.

This 15th day of June 1990.

Respectfully submitted


George M. Horn, Pro Se


Ferrell S. Horn, Pro Se

308 Brookside Drive
Auburn, AL 36830
(205) 821-3616